



POLICE DEPARTMENT

March 19, 2008

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Gary D'Andrea
Tax Registry No. 917493
113 Precinct
Disciplinary Case No. 82093/06

Police Officer Diane Weidler
Tax Registry No. 902589
71 Precinct
Disciplinary Case No. 82095/06

The above-named members of the Department appeared before me on November 14, 2007 and November 29, 2007, charged with the following:

Disciplinary Case No. 82093/06

1. Said Police Officer Gary D'Andrea, assigned to the Applicant Processing Division, while on duty, on or about and between February 21, 2005 and March 3, 2005, while acting in concert with Police Officer Joseph Brosseau, Tax #913356, Police Officer Noreen Ram, Tax #903298, and Police Officer Diane Weidler, Tax #902589, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that he disclosed confidential information concerning the property, affairs or government of the city which he obtained as a result of his official duties as a public servant and which is not otherwise available to the public and used said confidential information to advance his private interest or the interest of another person or firm associated with him. (As amended)

P.G. 203-10, Page 1, Paragraph 5 - PROHIBITED CONDUCT
New York City Chapter, Chapter 68, Conflicts of Interest 2604 (b)(4)

2. Said Police Officer Gary D'Andrea, on or about and between March 3, 2005 and August 17, 2006, having become aware of an allegation of corruption or serious misconduct involving members of the service, did fail and neglect to notify his Commanding Officer and/or the Internal Affairs Bureau Command Center, as required, to

wit: said Police Officer became aware that confidential Department information which he improperly provided to another member of the service from his assigned case files was subsequently published in a newspaper and said Police Officer failed to notify the Internal Affairs Bureau or his Commanding Officer as required. (As amended)

P.G. 207-21, Page 1-2 - ALLEGATIONS OF CORRUPTION AND SERIOUS
MISCONDUCT AGAINST MOS, COMPLAINTS

Disciplinary Case No. 82095/06

1. Said Police Officer Diane Weidler, assigned to the Applicant Processing Division, while on duty, on or about and between February 21, 2005 and March 3, 2005, while acting in concert with Police Officer Joseph Brosseau, Tax #913356, Police Officer Noreen Ram, Tax #903298, and Police Officer Gary D'Andrea, Tax #917493, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that she disclosed confidential information concerning the property, affairs or government of the city which she obtained as a result of his official duties as a public servant and which is not otherwise available to the public and used said confidential information to advance her private interest or the interest of another person or firm associated with her. (As amended)

P.G. 203-10, Page 1, Paragraph 5 - PROHIBITED CONDUCT
New York City Chapter, Chapter 68, Conflicts of Interest 2604 (b)(4)

2. Said Police Officer Diane Weidler, on or about and between March 3, 2005 and August 17, 2006, having become aware of an allegation of corruption or serious misconduct involving members of the service, did fail and neglect to notify her Commanding Officer and/or the Internal Affairs Bureau Command Center, as required, to wit: said Police Officer became aware that confidential Department information which she improperly provided to another member of the service from her assigned case files was subsequently published in a newspaper and said Police Officer failed to notify the Internal Affairs Bureau or her Commanding Officer as required. (As amended)

P.G. 207-21, Page 1-2 - ALLEGATIONS OF CORRUPTION AND SERIOUS
MISCONDUCT AGAINST MOS, COMPLAINTS

The Department was represented by Krishna O'Neal, Esq., Department Advocate's Office, and the Respondents were represented by Stuart London, Esq.

The Respondents entered pleas of Not Guilty. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 82093/06

Respondent D'Andrea is found Not Guilty of Specification No. 1 and Guilty of Specification No. 2.

Disciplinary Case No. 82095/06

Respondent Weidler is found Not Guilty of Specification No. 1 and Guilty of Specification No. 2.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called as witnesses Lieutenant Jonathan Amass and Lieutenant Margaret Callaghan.

Lieutenant Jonathan Amass

BACKGROUND

Amass, currently assigned to the Police Academy, was a member of the Personnel Bureau Investigations Unit from June 2004 through September 2006. Amass was directed to investigate the dissemination of confidential information to an outside organization.

Amass testified that candidates for the position of Police Officer undergo a background investigation prior to appointment. Amass also testified that individual investigative steps are documented on Case Review Sheets. Amass further testified that the Case Review Sheets are initially assessed by the candidate's assigned investigator.

Amass stated that the investigator's sergeant, lieutenant, and the Commanding Officer of the Applicant Processing Division (APD) also review the Case Review Sheets.

ORIGINAL INVESTIGATION

Amass said that Inspector Mohammed, Commanding Officer of APD, provided him with the initial details of this case. Amass also said that he received several Case Review Sheets, a package of candidate pedigree information, and a copy of an article that appeared in a New York City newspaper on March 3, 2005 [Department's Exhibit (DX) 1].

Amass indicated that he was provided with the following names of members of the Department that were considered subjects in the leak investigation: Police Officers Brosseau, Ram, Respondent Weidler, Respondent D'Andrea, Nuzzi and Martin. Amass also indicated that he was provided with the following names of members that were considered witnesses in the leak investigation: Police Officer Baumgardt, and retired Sergeant Petroglia, whose name appeared in the article. Amass indicated that these members were investigators in APD. Amass also said that Petroglia supervised APD investigators before he retired.

Amass testified that he compared the information on the Case Review Sheets with the information contained in the article. Amass indicated that a candidate named [REDACTED] admitted injecting himself with steroids around 1990 (see DX-2, Case Review Sheet for [REDACTED]). Amass also indicated that the article mentioned a candidate using steroids. Amass stated that [REDACTED] was investigated by Respondent D'Andrea.

Amass stated that a candidate named [REDACTED] admitted to having been fired from Macy's for stealing (see DX-3, Case Review Sheet for [REDACTED]). Amass

also stated that [REDACTED] was arrested for the same reason. Amass said that [REDACTED]'s case was dismissed and sealed. Amass also said that the article mentioned a candidate who was fired for stealing from Macy's. Amass stated that [REDACTED] was investigated by Respondent Weidler.

Amass said that a candidate named [REDACTED] was arrested for Criminal Possession of a Weapon in the Second Degree (see DX-4, Case Review Sheet for [REDACTED]). Amass said that [REDACTED] pled guilty to Disorderly Conduct and received a one-year conditional discharge.¹ Amass indicated that [REDACTED] was investigated by Ram.

Amass also testified that a candidate named [REDACTED] was arrested for money laundering. Amass said the case was dismissed. Amass also said there was a reference to money laundering in the article. [REDACTED] was investigated by Brosseau, the Patrolmen's Benevolent Association Delegate for APD during the time of the leak.

Amass indicated that these candidates' cases "mirrored what was in the article." Amass said "there was nothing that could preclude them from being hired" because the arrests were either sealed or dismissed and the steroid use occurred 15 years before the officer was hired. Amass stated that the PBA was engaged in contract negotiations with the City at the time the article was published.

Amass said he ran a computer check on the subject officers and concluded that there was no improper computer use on their part. Amass also said he interviewed Mohammed in June 2006. Amass learned from Mohammed that Baumgardt came forward with information regarding the leak.

¹ The article speaks in general terms of approved candidates that had been charged previously with, inter alia, weapons possession.

AMASS'S INTERVIEW OF BAUMGARDT

Amass testified that he interviewed Baumgardt on August 11, 2006. Amass indicated that Baumgardt told him that Brosseau and Ram "admitted" to collecting Case Review Sheets from other investigators at the Applicant Processing Division. Baumgardt told Amass that Brosseau admitted that he "took the Case Review Sheets and disclosed the information to PBA." Baumgardt also said that Brosseau told her that Ram brought Case Review Sheets to Brosseau's home while Brosseau was on sick leave. Baumgardt told Amass that the Case Review Sheets were collected and the information leaked around the time when Brosseau was out sick.

Baumgardt told Amass during the interview that her post was changed for one day sometime after the leak occurred. Amass said Baumgardt told him that she felt the supervisors in APD were blaming her for the leak. According to Amass, Baumgardt also said she was the focus of blame because she and Petroglia [REDACTED] and Petroglia's name appeared in the article.² Amass also said that Baumgardt made no mention of either Respondent as having been involved in the distribution of any information that later appeared in the article.

Amass could not pinpoint when he found out about the relationship between Baumgardt and Petroglia, stating that he was not sure if it was mentioned by Baumgardt or Mohammed during their respective interviews.

AMASS'S INTERVIEW OF PETROGLIA

Amass interviewed Petroglia in August 2006. Amass was informed by Petroglia that Al O'Leary, the PBA's communications director, asked Petroglia to speak with a

² [REDACTED]

reporter from a New York City newspaper regarding an article the paper was planning to write on the hiring process at APD. Amass also said that Petroglia told him that the reason for this article was to assist the PBA in obtaining a more favorable contract because if APD "had to lower their standards, maybe having a higher pay would attract better candidates."

Amass testified that Petroglia spoke with a reporter from the newspaper. Petroglia, according to Amass, told the reporter that "the hiring process should take longer than six to eight weeks that it did now." Also, according to Amass, Petroglia told the reporter that the Department, or APD specifically, should not be "rushing people through," and "in the day and age of terrorism, we should be looking into people's backgrounds a lot longer than they do." Petroglia told Amass that the reporter had a copy of a blank Case Review Sheet with her when they spoke.

Amass testified that Petroglia denied receiving any documents from Baumgardt. Petroglia also informed Amass that Ram admitted giving confidential information to Brosseau, who in turn admitted divulging the information outside of the Department.

Amass testified that Petroglia never mentioned either Respondent's name during his interview. Petroglia also told Amass that he did not think his quotes in the newspaper would "result in a big investigation."

Amass said that there was no evidence Petroglia or Baumgardt leaked any "specific candidate information." Amass also testified that the reporter refused to divulge the name of her source to him.

AMASS'S INTERVIEW OF BROSSAU

Amass interviewed Brosseau on August 17, 2006. Amass said that Brosseau admitted to soliciting "information from case investigators regarding people who were hired, that investigators felt shouldn't have been hired." Brosseau told Amass that he went to every PBA member at APD requesting Case Review Sheets from them. Brosseau told all PBA members at APD, including the Respondents, that he would go to the Commanding Officer and if that were not successful, then he would "go to the union," in order to "improve the hiring process." Brosseau informed Amass that "he gave copies of the information he solicited" to O'Leary, the PBA official.

According to Amass, Brosseau spoke with the reporter by telephone in order to confirm that the documents were official Department documents and to confirm the information contained within those documents. Amass also said that Brosseau told him "he was trying to improve the hiring process."

Amass conceded that he found "no evidence" indicating that either Respondent ever met with the reporter, or anyone from the newspaper or the PBA. Amass admitted that nothing Brosseau said to him indicated that either Respondent knew that the information they provided to Brosseau was going to end up in that newspaper. Nor did Brosseau indicate that either Respondent "had any idea that the PBA would use the information they gave to Brosseau to get a better contract."

AMASS'S INTERVIEW OF RAM

Amass testified that Ram admitted that she gave a copy of her Case Review Sheet to Brosseau. Amass also said that Ram admitted to obtaining a Case Review Sheet from another investigator's folder. Amass said that Ram gave copies of the Case Review

Sheets to Brosseau because she "was disgruntled about the hiring process, she felt some candidates were hired that shouldn't have been hired." Amass also said that neither Respondent ever gave any Case Review Sheets to Ram.

Amass testified that the Respondents worked in Queens, and Brosseau worked in Brooklyn. Amass said that at the time the article was published, Brosseau worked in the Retention Unit as the military liaison "where he wouldn't be investigating cases," though Amass did not "know if he was investigating cases."

Amass conceded that neither Respondent indicated in their Official Department Interviews that they wanted to assist the PBA in obtaining a better contract from the City as the reason why they gave Brosseau the Case Review Sheets. Nor did either Respondent comment that they knew that the information on those Case Review Sheets was going to appear in the newspaper.

Lieutenant Margaret Callaghan

Callaghan, currently assigned to the Personnel Bureau Investigations Unit, testified that in May 2006, she began supervising the investigation into the leak of confidential information from APD. The article appeared in March 2005, and Mohammed made a complaint in February 2006.

Callaghan acknowledged that at some point, individuals in APD believed that Baumgardt was the leak. No one reported her as the leak, however.

Callaghan stated that her investigative team conducted two sets of Official Department Interviews in regards to this investigation. The interviews occurred in August 2006 and June 2007.

Callaghan testified that Brosseau was "the military expert" at the Retention Unit when the article was published "and maybe two or three months prior." Brosseau "may have had some old cases . . . that he might have been still investigating, but he was mostly assigned to handle military issues." Callaghan was not aware that Brosseau was handling new cases to review. She stated that the Retention Unit was in Brooklyn, and the Respondents worked in Queens.

OFFICIAL DEPARTMENT INTERVIEWS OF WEIDLER

Callaghan said she reviewed the first Official Department Interview of Respondent Weidler, which was conducted on August 17, 2006. In that interview, Respondent Weidler admitted that she made copies of certain Case Review Sheets and personally handed them to Brosseau. Respondent Weidler asserted that she did not know what Brosseau intended to do with the documents, nor did she inquire as to Brosseau's intent. Respondent Weidler, according to Callaghan, gave the Case Review Sheets to Brosseau in his capacity as a PBA delegate because in Respondent Weidler's opinion this was a PBA issue. Callaghan also said that Respondent Weidler believed that Brosseau would go to the Commanding Officer of APD and possibly change some of the hiring practices.

Respondent Weidler said in her first interview that she realized that the newspaper article referred to a candidate she had investigated. The candidate, [REDACTED], had been accused of stealing from Macy's. Respondent Weidler did not believe [REDACTED] was a suitable hire. Respondent Weidler had been in contact with the security director at Macy's, who possessed "derogatory information" about [REDACTED]. Callaghan said that

Respondent Weidler expressed how happy she was that she was on vacation when the article was published, and that she thought she would be blamed for the leak.

Respondent Weidler stated at the first interview that she informed her Sergeant of her doubts regarding [REDACTED]. Respondent Weidler also said that she went to her Sergeant's supervisor about [REDACTED]. However, Respondent Weidler said, she did not receive the answer that she had been looking for.

Callaghan was present for a second Official Department Interview with Respondent Weidler, which took place in June 2007. "We established" at the second interview that she gave the Case Review Sheet to Brosseau around the time of "the hiring." Respondent Weidler expressed to Callaghan that that she was hoping that giving the information to Brosseau would prevent the person from actually being hired.

According to Callaghan, Respondent Weidler stated that the publishing of the article was misconduct, and that she understood her responsibility to report any misconduct to her Commanding Officer or to the Internal Affairs Bureau. Respondent Weidler told Callaghan that she did not report the misconduct because she did not know who was responsible for the leak and therefore did not need to notify anyone.

OFFICIAL DEPARTMENT INTERVIEWS OF D'ANDREA

Callaghan was present for the first Official Department Interview of Respondent D'Andrea, which occurred on August 17, 2006.

In the first interview, Respondent D'Andrea said he was not aware of Brosseau's intentions. Respondent D'Andrea claimed that the day of the first interview was the first time he saw, or read the article.

Callaghan was also present for the second Official Department Interview of Respondent D'Andrea, in June 2007. There, Respondent D'Andrea acknowledged that he admitted having seen the article, and that it was hanging up at work. Respondent D'Andrea was very upset because he "knew it was his guy," the steroids user, that was mentioned in the article. Callaghan indicated that the steroid admission was not on the first page of the article.

Respondent D'Andrea admitted at the second interview that he faxed the information to Brosseau at a number that Respondent D'Andrea recognized as not being Brosseau's work number. Respondent D'Andrea contended that Brosseau never stated "exactly" what he was going to do with the Case Review Sheet. Respondent D'Andrea "felt" that Brosseau would go to Mohammed "and maybe change the way things are being done and not have these people get hired."

Respondent D'Andrea said that since he did not know who leaked the information, he felt he did not have to report it.

Callaghan said that both Respondents were unhappy after having utilized the chain of command with respect to specific hiring concerns; Respondent D'Andrea spoke to a sergeant, and Respondent Weidler spoke to a sergeant and a lieutenant.

Callaghan said that Respondent Weidler spoke with the lieutenant because the sergeant also felt that [REDACTED] should be placed on hold and not immediately hired. Respondent Weidler told Callaghan that the lieutenant wanted Respondent Weidler to fax the additional information on [REDACTED] that Respondent Weidler had obtained from Macy's security, and Respondent Weidler did so, but [REDACTED] was still hired. Callaghan added that it was not Brosseau's job to review Case Review Sheets.

Callaghan admitted there was no evidence that either Respondent ever spoke to anyone from the newspaper. Both Respondents indicated that they expected the Case Review Sheets they gave Brosseau "would stay internal and not go external," such as appearing in the newspaper. Callaghan acknowledged on cross-examination that both Respondents indicated in their second Official Department Interviews that they gave Case Review Sheets to Brosseau because he had an open door policy with the Commanding Officer of APD. Callaghan also conceded that there was no evidence that either Respondent wanted a better contract for the PBA.

Callaghan testified that both Respondents "indicated they had complained to [Brosseau] time and time again, and [Brosseau] had gone to the CO time and time again and nothing was accomplished."

OFFICIAL DEPARTMENT INTERVIEW OF BAUMGARDT

Callaghan testified that Baumgardt said at her Official Department Interview that Brosseau and Ram admitted to her in the summer of 2005, or at a holiday dinner that year, that they were responsible for the leak, along with Ken [REDACTED] Callaghan also said that Baumgardt denied giving Brosseau any information.

Callaghan noted that none of the candidates profiled in the newspaper were investigated by Baumgardt. Callaghan said that no one involved in the investigation, subject or non-subject, implicated Baumgardt in the leak.

Baumgardt, according to Callaghan, never said anything about either Respondent being involved in the leaking of confidential information. Callaghan said she could not recall if Baumgardt mentioned that either Respondent wanted to help the PBA out with their contract.

OFFICIAL DEPARTMENT INTERVIEW OF PETROGLIA

Callaghan testified that Petroglia said he gave no specific candidate information to the newspaper. Petroglia was upset, however, because he felt that the article implied he had provided the newspaper with this information. Callaghan said that there was no evidence that Petroglia accessed the Case Review Sheets himself.

The Respondents' Cases

The Respondents testified on their own behalf.

Police Officer Diane Weidler

Respondent Weidler, assigned at the time of trial to the 71 Precinct, testified that she had approximately 300 active cases as an investigator with the Applicant Processing Division. She stated that she would normally submit a Case Review Sheet which outlined the preliminary investigation of each candidate. Respondent Weidler testified that she was familiar with the March 2005 article in the newspaper.

Respondent Weidler stated that she met [REDACTED] around ten days before the hire. Respondent Weidler said that [REDACTED] disclosed that he had been arrested, and admitted to giving a cash return to a Macy's customer on items that were never purchased. [REDACTED] indicated that he informed his manager that a customer did not have a receipt and wanted to return certain items. The manager supposedly authorized a cash return. Respondent Weidler said that [REDACTED] indicated that such occurrences happened more than once. [REDACTED] stated that he was informed by officials at Macy's

that he had given money back to people that had not bought anything. Respondent Weidler testified that she put [REDACTED] on hold pending further investigation.

Respondent Weidler testified that she contacted the security office at Macy's and discovered that [REDACTED] was listed as a "dishonest employee" that stole \$1,100 from a cash register, actually removing the cash from the till. Respondent Weidler testified that she received this information on a Friday.

Respondent Weidler stated that she approached her sergeant with her concerns, and that the sergeant directed her to contact Lieutenant Ryan in Brooklyn because Goodchild's Case Review Sheet was already there. Ryan, according to Respondent Weidler, asked her to fax him everything that she had on [REDACTED]. Respondent Weidler asserted that when she came in the next Monday, [REDACTED] had been hired.

Respondent Weidler testified that she never discussed questionable hires with the Commanding Officer, Mohammed. Respondent Weidler indicated that Mohammed's office was in Brooklyn, whereas Respondent Weidler worked in Queens. Respondent Weidler believed that by going to her sergeant and Ryan, she had addressed her concerns within the chain of command.

Respondent Weidler maintained that it was misconduct to hire someone with a questionable background. She testified that "as the hires went on, all the investigators, including myself, felt like things were getting so much worse with the quality of the applicants that we were hiring. We went to Joe [Brosseau] and explained to Joe because we were upset." Respondent Weidler said she "talked to Joe many times about different candidates. Every time, with every hire, it got more and more. It was all the investigators there, we went to Joe and complained to Joe."

Respondent Weidler contended that Brosseau needed documentation to present to the Commanding Officer to justify not hiring certain people. Respondent Weidler said she did not recall how she gave Brosseau a copy of [REDACTED]'s Case Review Sheet. She also said she did not specifically ask Brosseau what he was going to do with the Case Review Sheet. Respondent Weidler testified that she thought Brosseau "was going to prevent him from going into the class. . . . I just thought that he would bring it to somebody's attention in Brooklyn to prevent him from being hired."

Respondent Weidler claimed that she never intended the information to appear in the newspaper, or to assist the PBA in their contract talks with the City. Respondent Weidler admitted that she was not upset to see the information in the newspaper because she thought this would change the hiring practices.

Respondent Weidler testified that she never thought the information would leave the confines of APD. Respondent Weidler admitted that she was concerned that personnel within APD would think she was the leak.

Respondent Weidler claimed she believed the incident "was being taken care of" by virtue of Baumgardt's transfer for one day. Respondent Weidler conceded she had no knowledge that Baumgardt leaked the information, or that Baumgardt was formally disciplined for the leak.

Respondent Weidler agreed that she recognized parts of the article as relating to her case. Respondent Weidler claimed she had no obligation to notify anyone because the candidate was not named. Respondent Weidler acknowledged that she believed a member of the Department provided the information on potential candidates to the newspaper.

Respondent Weidler admitted she was friends with Brosseau, and that they spent time together outside work. Respondent Weidler also believed Brosseau had a good rapport with the Commanding Officer of APD. She acknowledged that it was not Brosseau's responsibility as a PBA delegate to review her cases.

Police Officer Gary D'Andrea

Respondent D'Andrea, currently assigned to the 113 Precinct, testified that under the old hiring policy, if a candidate was initially placed on review after his mini-medical examination, the case "sat in a drawer until after the hire." Under a new policy, all candidates had to be investigated, and Case Review Sheets were required on each. Respondent D'Andrea asserted that his workload almost tripled as a result.

Respondent D'Andrea stated that he worked in Queens and Mohammed worked in Brooklyn. Respondent D'Andrea never dealt with Mohammed regarding any of his cases and did not have an open door policy with him. Respondent D'Andrea contended that Mohammed would probably not speak directly with him over the phone. Respondent D'Andrea also said he did not approach Lieutenant Cummings – his sergeant's immediate supervisor – or the Executive Officer, Captain Wright, with his concerns.

Respondent D'Andrea asserted that he thought someone who may have been one of his candidates, [REDACTED], was mentioned in a newspaper article published on March 3, 2005. Respondent D'Andrea testified that [REDACTED]'s Case Review Sheet noted two arrests, one for driving while intoxicated and one for harassment, as well as an admission that he used steroids. Respondent D'Andrea recommended placing [REDACTED] on review, and brought the case to his sergeant, who indicated he would speak with the lieutenant. Respondent D'Andrea did not remember if the case was returned to him, which happened

when the candidate is placed on review. Respondent D'Andrea testified that [REDACTED] was eventually hired.

Respondent D'Andrea testified that he and other investigators complained to Brosseau about the quality of people the Department was hiring. Respondent D'Andrea also said that individuals were being hired who had not undergone a thorough background investigation. Brosseau, according to Respondent D'Andrea, said, "You guys, you got to give me something. I can't go into this [Commanding Officer] and say this guy, that guy. You have to give me cases."

Respondent D'Andrea did not specifically remember when he gave Brosseau the Case Review Sheets, although he agreed that on prior occasions he discussed questionable candidates with Brosseau. Respondent D'Andrea said that earlier in the year, prior to [REDACTED]'s hire, Brosseau asked if anyone had any cases. Respondent D'Andrea faxed information to Brosseau, and spoke with Brosseau before and after the information was faxed, even though he did not recognize the fax number. Brosseau, according to Respondent D'Andrea, received the fax.

Respondent D'Andrea admitted that Brosseau was in a different unit of APD, the Retention Unit, but asserted that Brosseau was still "getting some cases, appointed cases, and some new cases," while on overtime. Respondent D'Andrea was not aware that Brosseau was the military liaison at the Retention Unit, and believed that was Detective Clark's job. Respondent D'Andrea stated that the Retention Unit's function was to retain candidates that had applied but wanted to withdraw. The military desk worked on candidates that had questions like, "I'm going to Iraq in a couple of years. Can I put myself on hold?"

Respondent D'Andrea hoped that Brosseau would speak to Mohammed or the Administrative Lieutenant, "someone in Admin, and maybe have us get more time to do a more thorough examination on these candidates, improve some of the hiring that was going on, at least give us more time." Brosseau, Respondent D'Andrea asserted, had an open door policy with Mohammed.

Respondent D'Andrea denied that he intended to advance the interest of the PBA or any private interest, or to assist the PBA in its contract negotiations with the City, by revealing confidential information. Respondent D'Andrea asserted that he never intended for the information to appear in the newspaper. Respondent D'Andrea also denied meeting with O'Leary, the reporter, or anyone else from either the PBA or the newspaper. Respondent D'Andrea asserted that he did not know how the information ended up in the newspaper.

Respondent D'Andrea conceded the article did mention someone admitting to using steroids, but no name, address or other arrest information was given.

Respondent D'Andrea admitted that he stated at his first Official Department Interview that he was aware of the article but did not read the entire article.

Respondent D'Andrea also said that Baumgardt had been transferred because it was believed that she was responsible for giving Petroglia the information.

FINDINGS AND ANALYSIS

The first and second specifications in Respondent Weidler's charges are identical to the first and second specifications in Respondent D'Andrea's charges, except that their names are substituted for each other where appropriate.

Specification No. 1 as to each Respondent

The Respondents, who both worked at the Applicant Processing Division, are charged in the first specification with divulging candidates' Case Review Sheets to a New York City newspaper, with the assistance of their union, the Patrolmen's Benevolent Association. The Department asserts that the Respondents acted in concert with each other and with retired Police Officers Joseph Brosseau and Noreen Ram to release this "confidential information to advance [their] private interest or the interest of another person or firm associated with [them]." The language of the specification tracks Section 2604 (b)(4) of the New York City Charter, Chapter 68, which governs conflicts of interest. The specification references that section of law.

At trial, the Department's main contention was that the "interest" here was to influence the contract negotiations for police officers. In its opening statement, the Department alleged that the Respondents "divulged this information during a time which the PBA was in the middle of negotiating employment contracts for their Police Officers with the City." The Respondents' motive was "their belief that too many sub-par recruits were being hired and that increased salaries would attract better candidates."

In its summation, the Department asserted that its "witnesses explained that it was understood that while the collective bargaining activity was going on, that the idea was to attract better candidates for the Department by putting a microscope on the type of individuals that were hired, questionable ones." The Case Review Sheets were collected, the Department said, "to support the position that if the public got wind of a few questionable hires . . . , more money might be put into the deal." The Department contended that the "idea obviously was to attract more desirable candidates, and we know

this was the intent because Officer Brosseau and Officer Ram pled guilty to doing so.”

Alternatively, the Department maintained, the Respondents’ “interest would even include their personal desire to help hire better candidates.”

The Department added that the Respondents, “as government employees with exclusive information not available to the public, to divulge this information for their own interest.” The Department posited that the Respondents “aided Officers . . . Ram and Brosseau, in divulging this information for the interest of the PBA agenda that had been expressed and talked about by the Department’s witnesses.”

The Respondents are found Not Guilty of the first specification because their behavior is not covered by the Conflicts of Interest statute. The statute defines “interest” as “an ownership interest in a firm or a position in a firm.” New York City Charter § 2601 (12). “Ownership interest” is defined as:

an interest in a firm held by a public servant, or the public servant’s spouse, domestic partner, or unemancipated child, which exceeds five percent of the firm or an investment of twenty-five thousand dollars³ in cash or other form of commitment, whichever is less, or five percent or twenty-five thousand dollars of the firm’s indebtedness, whichever is less, and any lesser interest in a firm when the public servant, or the public servant’s spouse, domestic partner, or unemancipated child exercises managerial control or responsibility regarding any such firm.

A “firm” includes “a sole proprietorship, joint venture, partnership, corporation and any other form of enterprise.” New York City Charter § 2601 (11).

Thus, the “interest” referred to in the specification has to consist of a tangible financial stake in an enterprise. It cannot simply mean being interested in something as that term is commonly understood, i.e., that someone is curious or concerned about a matter, e.g., that the Respondents were interested in improving the caliber of candidates

³ The \$25,000 figure is adjustable according to relevant economic statistics, see New York City Charter § 2601 (16).

approved to become police officers, or in gaining a better contract for police officers by influencing the collective bargaining and arbitration processes. Under Chapter 68 of the Charter, the Respondents did not have an "interest" in the PBA because they had neither an "ownership interest" in that "firm," nor a position with them. Even a desire by the Respondents to improve their personal financial situations by helping to get a better police officers contract would not appear to violate this subsection because that would not be a private interest, but one directly connected to their positions as public servants.

Even if the contract could serve as the "interest" here, the Department failed to make the connection between that intent and the conduct of these Respondents. The only person to assert that contractual considerations played a role was retired Sergeant Tony Petroglia. He did not testify at trial, but his interview statements were admitted through Lieutenant Amass. Amass testified that Petroglia told him that he was asked by Al O'Leary, the PBA's communications director, to speak with a newspaper reporter. The newspaper, according to the account given to Amass by Petroglia, was planning an article about the Department's hiring process. Petroglia told Amass that the reason for the article was "to help cops get a better contract and hire [sic] pay by demonstrating how, if APD had to lower their standards, maybe having a higher pay would attract better candidates."

Amass did not indicate, however, what precise basis Petroglia had for saying that the reason for the article was to improve the PBA's collective-bargaining position. Amass testified that Petroglia "drew that conclusion from his conversation with Al O'Leary." Significantly, Amass did not "know that [Petroglia] drew that conclusion from Officer Brosseau."

Both Respondents testified that they each had a similar intention as Brosseau – to improve the process at APD because candidates that they considered unfit were getting hired. Amass testified that Brosseau did not indicate that either Respondent gave him the Case Review Sheets in order to influence the contract. Lieutenant Callaghan testified that there was no evidence that either Respondent intended to influence the contract.

Brosseau, for his part, told Amass that he disclosed the Case Review Sheets to the PBA in an attempt to improve the hiring process, and only spoke to the reporter when she telephoned to confirm the information in the Case Review Sheets. Thus, there is no link between Petroglia's statement that the purpose of the article was to improve the contract, and Brosseau's conduct in giving the Case Review Sheets to O'Leary. It follows that there is no link between any specific intent to improve the contract, and the conduct of the Respondents in giving their Case Review Sheets to Brosseau.

In conclusion, because the Department did not prove that the Respondents divulged confidential information in order to promote an "interest" as that term is defined under Chapter 68 of the Charter, or that the purpose of the leak to the newspaper was to get a better contract for police officers, the Respondents are found Not Guilty of Specification No. 1.⁴

Specification No. 2 as to each Respondent

The final specification charges the Respondents with failing to report the serious misconduct of other members of the service. The specification states that the

⁴ As noted supra, on summation, the Department referred to the Guilty pleas of Police Officers Brosseau and Ram as proof that the intent behind the leak to the newspaper was to improve the police officer contract. These pleas were not introduced into evidence, but the Court has examined them sua sponte, see Rules of the City of N.Y., tit. 38, § 15-04 (e)(2). There is nothing in the allocutions of Brosseau and Ram to demonstrate that Weidler or D'Andrea had a specific intent to influence the contract.

Respondents became aware that confidential information they improperly provided to another member of the Department was later published in a newspaper. The Court finds each Respondent Guilty of this specification.

Both Respondents admitted that when they read the newspaper article, they recognized that information about a candidate they had worked on had been leaked to the newspaper. They should have suspected that, after they gave the Case Review Sheets to Brosseau, either Brosseau or another member of the Department transferred that information to the newspaper, resulting in a front-page article. Additionally, it was improper for the Respondents to give the Case Review Sheets to Brosseau in the first place because he was not at that time a member of their unit, nor was he within their chain of command.

The leak to the newspaper constituted the divulging of confidential candidate information to a newspaper reporter. That information consisted not only of the candidates' prior criminal convictions or drug use, but also of their names, addresses, educational, employment and military backgrounds, and debt and public assistance history. There should be no doubt that the leak was serious misconduct within the meaning of *Patrol Guide* § 207-21.

It is not necessary that the Respondents had to believe Brosseau had something to do with the leak to the newspaper; it was enough that they realized, or should have realized, that serious misconduct by a Department employee had occurred. Therefore, the Court rejects the argument, raised by both Respondents in their Official Department Interviews and on summation, that they did not have to report the leak because they did not know who leaked the Case Review Sheets.

The Respondents also promoted the argument that the Department already knew about the misconduct, and had in fact pinned the blame on Police Officer Baumgardt. They point to the fact that Baumgardt was the wife of Petroglia, who was quoted by name in the article. Baumgardt's assignment was changed for one day to a security post after the article was published. The Respondents' argument essentially is that the Respondents made a reasonable conclusion that the Department was already aware of the leak because it was punishing Baumgardt for it.

The Court rejects the Respondents' arguments. Members of the service have an obligation to report corruption or serious misconduct. That responsibility is on the individual member so that a situation does not arise where a member believes that the Department knows about such an incident when in fact it does not. As such, the argument that the Department already knew about misconduct is not a defense to the failure of a Department member to report misconduct when he or she becomes aware of it.

Accordingly, the Respondents are each found Guilty of the Specification No. 2 against them.

PENALTY

In order to determine an appropriate penalty, the Respondents' service records were examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222, 240 (1974). Respondent Weidler was appointed to the Department on June 30, 1992. Respondent D'Andrea was appointed to the Department on July 18, 1996. Information from their

personnel folders that was considered in making these penalty recommendations is contained in the attached confidential memoranda.

A penalty for failing to report corruption or serious misconduct should depend on, for one thing, the nature of the underlying misconduct that was not reported. Compare, e.g., Disciplinary Case Nos. 73601/00 & 76302/00 (members forfeited 30 vacation days for canceling request for tow truck to respond to accident scene and to report immediately to patrol supervisor and platoon commander that off-duty member had been involved in motor vehicle accident, with serious physical injury, where they believed alcohol was involved) and Disciplinary Case No. 77859/02 (Respondent forfeited 45 vacation days for failing to request medical assistance for argumentative civilian who was injured by Respondent's partner; Respondent and partner then left the scene, and Respondent failed to notify IAB or commanding officer of partner's misconduct) with Disciplinary Case No. 77009/01 (member forfeited 10 vacation days for failing to notify IAB or commanding officer after becoming aware that member of Department, who had been involved in motor vehicle accident, may have been intoxicated).

Another consideration should be whether the member had any motive to withhold information about the underlying misconduct, such as trying to cover it up. See Disciplinary Case No. 74677/99 (Respondent forfeited 30 suspension days already served for neglecting to inform Department that his brother had access to vehicle that had been involved in hit-and-run accident; Respondent knew the Department was investigating the accident, but withheld the information because he wanted to protect his brother and avoid becoming witness against brother in criminal case).

The instant case is not one where a member of the Department merely became aware of corruption or serious misconduct, but were not themselves involved in any way with the misconduct or trying to help others conceal it. See Disciplinary Case No. 79367/04 (Captain forfeited 8 vacation days for failing to notify IAB upon becoming aware of possible corruption or serious misconduct; instead, he conducted his own internal investigation).

The Court has taken into consideration that the Respondents knew, or should have known, that the information they gave to Brosseau got leaked to the newspaper once they saw that very information in the article. Their equivocation at trial about who they thought might have given that information to the newspaper is not credible. It is reasonable to conclude that their failure to come forward was predicated in part on a fear that they would be implicated in the leak because it was excerpts of "their" Case Review Sheets that appeared in the newspaper. Their reluctance may be understandable, but it is not an excuse for concealing the serious misconduct of another member of the Department.

In light of the otherwise fine service records of the Respondents, I recommend that each Respondent be penalized with a forfeiture of 30 vacation days.

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner – Trials

APPROVED
SEP 26 2006
RAYMOND W. KELLY
POLICE COMMISSIONER